UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,061	07/14/2003	Richard Thomas Gray	A01182	6906

21898 7590 04/09/2009

ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-2399

EXAMINER	
MRUK, BRIAN P	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
04/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD THOMAS GRAY
and BARRY WEINSTEIN

Appeal 2009-0004
Application 10/619,061
Technology Center 1700

Decided:[1] April 09, 2009

Before BRADLEY R. GARRIS, CHUNG K. PAK, and
TERRY J. OWENS, *Administrative Patent Judges.*

GARRIS, *Administrative Patent Judge.*

DECISION ON APPEAL

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3, and 9-12. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM-IN-PART.

Statement of the Case

Appellants claim a composition comprising one or more polyelectrolytes in contact with an aqueous system made from certain types of polymers having a weight average molecular weight between 1,000 and 20,000 and "wherein said aqueous comprises fabric" (claim 1).

Representative claims 1, 3, and 12 read as follows:

> 1. A triggered response composition comprising: one or more polyelectrolytes in contact with an aqueous system that is stable and insoluble in an aqueous system at an ionic strength equivalent to 0.5 M sodium chloride or higher and when in contact with an aqueous system at an ionic strength equivalent to less than 0.1 M sodium chloride, the composition disperses, disintegrates, dissolves, destabilizes, swells, or combinations thereof; wherein the polyelectrolyte is one or more alkali soluble polymers having a weight average molecular weight between 1,000 and 20,000 comprising: (a) 5-70 weight percent of acidic monomers selected from methacrylic acid or acrylic acid; (b) 30-95 weight percent of one or more non-ionic vinyl monomers selected from butyl acrylate, styrene and methyl methacrylate and (c) 0.01 to 5 weight percent of one or more cross-linking agents selected from the group consisting of alkaline earth ions calcium, magnesium and barium, wherein said aqueous system comprises fabric.
>
> 3. A barrier composition comprising: one or more triggered response composition of claim 1, further comprising one or more active ingredients, and wherein said polyelectrolyte surrounds said active ingredients.
>
> 12. The triggered response composition of claim 1, wherein said aqueous system is a fabric laundry wash cycle.

The Examiner rejects all appealed claims under 35 U.S.C. § 103(a) as being unpatentable over the Bardman patent of record (6,710,161 B2 issued Mar. 23, 2004).

Rejection of Independent Claims 1 and 9

Issue

Have Appellants shown error in the Examiner's legal determination that the independent claim limitation "wherein said aqueous comprises fabric" (claims 1, 9) encompasses Bardman's disclosed embodiment of textile coated with an aqueous composition containing Appellants' independent claim ingredients?

Findings of Fact

Appellants do not dispute the Examiner's finding that Bardman discloses (or at least would have suggested) an aqueous composition containing the polymer ingredients required by the independent claims on appeal and that Bardman further discloses (or at least would have suggested) applying this aqueous composition onto textile (i.e., fabric) (Ans. 3-5).

Principles of Law

During examination, a claim should be given its broadest reasonable interpretation consistent with the specification and should be read in light of the specification as it would be interpreted by a person of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Limitations are not to be read into the claims from the specification. *In re Van Geuns*, 988 F.2d 1181, 1184-85 (Fed. Cir. 1993).

Analysis

Appellants argue that the Examiner has misinterpreted the independent claim phrase "wherein said aqueous system comprises fabric" as encompassing Bardman's embodiment of textile coated with an aqueous composition (App. Br. 7-9; Reply Br. 2-3). According to Appellants, this claim phrase should be interpreted as requiring an aqueous system which contains fabric and which exhibits the characteristics of a fluid (*id.*). We do not agree.

The claim phrase "wherein said aqueous system comprises fabric" contains no recitation which limits the phrase in the manner argued by Appellants. For example, contrary to Appellants' argument, nothing in this phrase requires an aqueous system which comprises fabric and which exhibits the characteristics of a fluid. Therefore, the interpretation urged by Appellants results from inappropriately reading limitations from the Specification into claims 1 and 9.

Under these circumstances, the record before us reflects that the Examiner has properly given claims 1 and 9 their broadest reasonable interpretation consistent with the Specification as they would be interpreted by a person of ordinary skill in this art.

Conclusions of Law

Appellants have not shown error in the Examiner's legal determination that the independent claim limitation "wherein said aqueous comprises fabric" (claims 1, 9) encompasses Bardman's disclosed embodiment of textile coated with an aqueous composition containing Appellants' independent claim ingredients.

We sustain, therefore, the Examiner's § 103 rejection of independent claims 1 and 9 as being unpatentable over Bardman.

The Rejection of Dependent Claims 3 and 10-12

Issues

Have Appellants shown error in the Examiner's implicit determination that Bardman teaches or would have suggested that the copolymer which surrounds pigment particles has a weight average molecular weight between 1,000 and 20,000 as required by dependent claims 3/1 and 10/9?

Have Appellants shown error in the Examiner's determination that Bardman's disclosed embodiment of textile coated with an aqueous composition satisfies the recitation "wherein said aqueous system is a fabric laundry wash cycle" of dependent claims 11/9 and 12/1?

Findings of Fact

The Examiner correctly finds that Bardman generically discloses a composition comprising copolymer particles which "may have a weight average molecular weight of at least 5,000, preferably at least 50,000, and more preferably, at least 100,000" (col. 4, ll. 19-21; Ans. 3-4). However, concerning Bardman's embodiment of composite particles wherein pigment particles are surrounded by a plurality of copolymer particles (col. 13, ll. 12-24), Bardman specifically discloses that "[t]he composite particle may contain copolymer particles having a weight average molecular weight of at least 50,000, preferably of at least 250,000, and more preferably of at least 500,000" (col. 13, ll. 48-51). The Examiner makes no finding as to whether Bardman teaches or would have suggested a composite particle containing

copolymer particles having a weight average molecular weight between 1,000 and 20,000 as required by dependent claims 3/1 and 10/9.

The Examiner also makes no finding as to whether Bardman teaches or would have suggested an aqueous system which is a fabric laundry wash cycle as recited in dependent claims 11/9 and 12/1.

Principles of Law

All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

Analysis

We agree with Appellants that the Examiner has erred in rejecting dependent claims 3/1 and 10/9 as being unpatentable over Bardman (App. Br. 11; Reply 4). As correctly argued by Appellants, these claims require that the polyelectrolyte which surrounds an active ingredient (dependent claims 3,10) is a polymer having a weight average molecular weight between 1,000 and 20,000 (parent independent claims 1, 9) whereas Bardman specifically discloses that the polymer which surrounds pigment particles has a weight average molecular weight of at least 50,000 (*id.*). On the record before us, the Examiner has made no finding that Bardman teaches or would have suggested surrounding pigment particles with polymer having a weight average molecular weight within Appellants' claimed range.

It follows that the Examiner has failed to establish a prima facie case of unpatentability for dependent claims 3/1 and 10/9.

We also agree with Appellants' argument that the recitation "wherein said aqueous system is a fabric laundry cycle" of dependent claims 11/9 and

12/1 defines a composition which differs from Bardman's composition and that the Examiner has failed to establish (or even assert) that Bardman would have suggested the composition of these appealed claims (App. Br. 11-12; Reply Br. 4-5). In response to this argument, the Examiner contends that dependent claims 11 and 12 recite only the intended use of the composition defined by the parent independent claims (Ans. 6).

The Examiner's contention is incorrect. The recitation of these dependent claims does not constitute merely a statement of intended use as urged by the Examiner. Instead, claims 11 and 12 further define the composition of their parent independent claims by requiring that the aqueous system of this composition "is a fabric laundry wash cycle" (claims 11, 12). In the record of this appeal, the Examiner has not established or even asserted that Bardman teaches or would have suggested a composition comprising an aqueous system which "is a fabric laundry wash cycle" (*id.*).

Conclusions of Law

Appellants have shown error in the Examiner's implicit determination that Bardman teaches or would have suggested that the copolymer which surrounds pigment particles has a weight average molecular weight between 1,000 and 20,000 as required by dependent claims 3/1 and 10/9.

Appellants have shown error in the Examiner's determination that Bardman's disclosed embodiment of textile coated with an aqueous composition satisfies the recitation "wherein said aqueous system is a fabric laundry wash cycle" of dependent claims 11/9 and 12/1.

For these reasons, we cannot sustain the Examiner's §103 rejection of dependent claims 3 and 10-12 as being unpatentable over Bardman.

Summary

We have sustained the § 103 rejection based on Bardman of independent claims 1 and 9, but not of dependent claims 3 and 10-12.

Order

The decision of the Examiner is Affirmed-In-Part.

AFFIRMED-IN-PART

ssl

ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-2399